IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23637 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHBHAI FATESING - Petitioner(s)
Versus
THE STATE OF GUJARAT & 6 - Respondent(s)

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Appearance :

MR NV GANDHI for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3
MR SATYAM CHHAYA, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 3, 5,
UNSERVED-EXPIRED (N) for Respondent(s) : 4,
RULE UNSERVED for Respondent(s) : 6 - 7.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 23/04/2007

ORAL JUDGMENT

1. Pursuant to the order passed by this Court in MCA No.615/2007, the main SCA No.23637/2005 is

restored and is simultaneously taken up for hearing.

2. The petitioner has preferred the petition for challenging the legality and validity of the order passed by the Tribunal dated 15.4.2005, whereby the Tribunal has rejected the revision application on the ground of limitation since the revision was barred.

3. Heard Mr.Gandhi, learned Counsel appearing for the petitioner and Mr.Chhaya, learned AGP for the State authorities.

4. It has been contended by the learned Counsel appearing for the petitioner that the Tribunal has rejected the revision on the ground of limitation and he further submitted that while incidentally considering the question of limitation, the Tribunal has also considered the merits of the revision and in the submission of Mr.Gandhi, learned Counsel for the petitioner, the Tribunal could not have examined the merits of the revision while considering the application for condonation of delay and for such purpose, he relied upon the decision of this Court in case of **“Pushpaben Balwantrai v.**

Nandkumar Ramanlal & Anr.", reported in 2004(4) GLR, 3015 and even on merits he contended that it was mandatory for the Mamlatdar to inquire as to whether the tenancy was surrendered after following the procedure or not and since the said aspect was not considered, the order passed by the Mamlatdar and ALT on merits and consequently the order of the revisional authority as well as of Tribunal were illegal and, therefore, he submitted that even otherwise also on merits there was a good case for the petitioner and the Tribunal has not properly considered the merits of the revision and, therefore, this Court may interfere.

5. Mr.Chhaya, learned AGP has supported the order passed by the lower authorities.

6. Having considered the above, it deserves to be recorded that it is an admitted position that the father of the petitioner submitted an application under Section 32FF of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as "the Act") which, inter alia, provides for the enabling rights to the tenant to purchase the land even if the possession is surrendered. In the said application Mamlatdar

had issued notice. Thereafter the father of the petitioner declared before the Mamlatdar that he was not desirous to proceed with the application and it was further declared that the possession of the land has been given to the landlord under Section 32P of the Act. Acting upon the same, Mamlatdar and ALT disposed of the application as having been filed on account of the aforesaid declaration made by the father of the petitioner. No action whatsoever has been taken for a period of about 7 years, after such declaration and after the disposal of the said proceedings. It is only on 7.8.2001, the Dy. Collector initiated revisional power suo motu and after examination, the Dy. Collector decided to withdraw the notice for exercising the revisional power. Therefore, it was not a case where the petitioners or the father of the petitioners were aggrieved by the order of the Mamlatdar or the closure of the proceedings by the Mamlatdar and ALT. Thereafter the Dy. Collector decided to withdraw the notice having found that the land was allotted to the landlord under Section 32P of the Act and the said position was confirmed, there was no case for

exercise of revisional power. The petitioners herein, who are the legal heirs of the deceased Fatesignbhai Punambhai Parmar after a period of about more than two years preferred the revision and the impugned order has been passed by the Tribunal.

7. On the aspects of condonation of delay it cannot be said that the Tribunal has exercised the discretion for condonation of delay in perverse manner, which may call for interference by this Court under Article 227 of the Constitution of India, more particularly when the Tribunal also on merits found that there is no case for the revisioning petitioners.

8. Apart from the above, it appears to this Court that the party made declaration before the lower authority cannot be heard to say after seven years that the declaration was made under pressure. Further when the allotment was made of the land under Section 32P of the Act to the landlord, even otherwise also the tenant had no lawful right to purchase the land. In any case, it was on account of voluntary action on the part of the tenant the declaration was made as he was not desirous to purchase the land and

confirmed the position for allotment of the land under Section 32P of the Act. Therefore, it cannot be said that the Mamlatdar and ALT has committed any error of jurisdiction while passing the order on 20.5.1994, which is confirmed by the Dy. Collector against which the revision is dismissed by the Tribunal.

9. Even if the contention raised on behalf of the petitioners by placing reliance upon the decision of **"Pushpaben Balwantrai v. Nandkumar Ramanlal & Anr." (supra)** is considered for the sake of examination, then also this Court is not precluded from considering the merits of the matter when power is invoked under Article 226/227. If on merits this Court finds that there is no case for interference to the orders, which were under challenge before the Tribunal, no useful purpose would be served in condoning the delay and remanding the matter to the Tribunal for examination on merits. Therefore, the said decision is of no help to the petitioners.

10. Mr.Gandhi, learned Counsel appearing for the petitioners for supporting his contention that

the mandatory procedure was required to be followed by the Mamlatdar, relied upon the decision of the Apex Court in case of "**Babu Parasu Kaikai (Dead) by LRs v. Babu (dead) by LRs", reported in AIR 2004 SC, 754** and more particularly the observations made at para 6 and contended that since it was obligatory for Mamlatdar to examine the aspects of mandatory procedure for surrendering of the tenancy, failing which the order of the Mamlatdar and ALT would be vulnerable. In the said case before the Apex Court in case of "**Babu Parasu Kaikai (Dead) by LRs v. Babu (dead) by LRs"**(supra), there was no allotment of the land by the authority to the landlord under Section 32P of the Act. As such the allotment of land under Section 32P of the Act pre-supposes the action of surrendering by the tenant prior to the allotment to the landlord. Further, in any case, it was not a case where the tenant himself declared before the Mamlatdar and ALT that he was not desirous to purchase the land and he confirmed the position of allotment of the land to the landlord under Section 32P of the Act.

Therefore, the said decision is of no help to the petitioners.

11. In view of the above, no case is made out for interference. Hence, rejected.

23.4.2007 **(Jayant Patel, J.)**

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